

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TERRAFUSION INTERNATIONAL, INC.,  
et al.,

Plaintiffs,

v.

TERRAFUSION, INC., et al.,

Defendants.

Case No. [15-cv-02993-RS](#)

**ORDER VACATING HEARING ON  
PLAINTIFFS' MOTIONS TO DISMISS  
AND FOR SUMMARY JUDGMENT  
AND INSTRUCTING PLAINTIFFS TO  
PROCEED BY WAY OF DEFAULT**


In May 2012, Plaintiffs Edward Rotstein and TerraFusion International, Inc. sued Terrafusion, Inc. over an asset purchase agreement gone awry. Terrafusion, Inc. and MCC Partners NY, LLC answered the complaint and countersued. In November 2016, Plaintiffs filed motions to dismiss and for summary judgment. Shortly thereafter, counsel for Defendants moved to withdraw and to continue the hearing on Plaintiffs' pending motions. Plaintiffs strongly opposed the continuance, arguing that the case is almost five years old and that Defendants removed the case to federal court "on the eve of trial in 2015." Dkt. No. 42. The motions to withdraw and for continuance were heard on December 14, 2016. Counsel for both parties and a representative for Defendants appeared by telephone. Good cause appearing, the motion to withdraw was granted. As a result, the hearing on Plaintiffs' pending motions was continued from December 15, 2016 to February 16, 2017. Defendants were ordered to retain new counsel immediately.

In a letter dated January 11, 2017, Mark Cukier, acting on behalf of TerraFusion Inc. and MCC Partners NY LLC, requested another sixty day continuance of the hearing on Plaintiffs' pending motions. That request was denied and Defendants were warned that, unless they appeared through counsel on or before February 10, 2017, Plaintiffs would be directed to move for default

1 judgment against them. *See* Dkt. No. 55. As of the date of this order, Defendants still have not  
2 retained new counsel, nor opposed the pending motions. Accordingly, Plaintiffs are hereby  
3 ordered to apply for entry of default and thereafter move for default judgment. *See United States*  
4 *v. High Country Broad. Co.*, 3 F.3d 1244, 1245 (9th Cir. 1993) (holding that when a defendant is  
5 ordered to retain counsel and the defendant fails to do so, entry of a default judgment against  
6 defendant is “perfectly appropriate”). The February 16, 2017 hearing on Plaintiffs’ motions to  
7 dismiss and for summary judgment is hereby vacated. Pursuant to the order granting Zvi Silver’s  
8 motion to withdraw as counsel, Mr. Silver is directed to forward this order to Defendants.

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10 **IT IS SO ORDERED.**

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12 Dated: February 14, 2017

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15 RICHARD SEEBORG  
16 United States District Judge  
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